

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-326-C

In Re:)	
State Universal Service Support of Basic Local)	POST- HEARING BRIEF OF
Service Included in a Bundled Service Offering)	OFFICE OF REGULATORY STAFF
or Contract Offering)	

Pursuant to 26 S.C. Code Ann. Regs. 103-851, the South Carolina Office of Regulatory Staff (“ORS”) submits this Post-Hearing Brief to address the question of whether State Universal Service Fund Support (“State USF”) should continue to be provided where basic local exchange telephone service is part of a bundle of services or part of a contract offering. The Commission has the authority to decide whether support should be provided to bundled local or contract offerings. (T. 46; 165-166; 213-214; 263; 276)

For the reasons set forth below, the Commission should find that basic local exchange service whether provided on a stand-alone basis or as part of a bundle should continue to be supported by the State USF.

I. History of the State Universal Service Fund And Associated State Legislation

The General Assembly required the establishment of a universal service fund to ensure “universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs,...” and required that the fund be “consistent with applicable federal policies,...” (1996 S.C. Acts No. 354, effective May 29, 1996 codified in S.C. Code Ann. 58-9-280(E) (Supp. 2008)) In Docket No. 1997-239-C, the Commission held hearings and issued several orders to create the State USF. The Commission’s

orders were unsuccessfully appealed to the S.C. Supreme Court. (Office of Regulatory Staff v. South Carolina Public Service Commission, et al, 374 S.C. 46, 647 S.E. 2d 223 (2007), the Court affirmed Commission Order Nos. 97-753, 98-322, and 2001-419 implementing the State USF)

While Section 58-9-280 (E)(4) provides that the Commission shall establish the overall size of the State USF, the Commission in Order No. 2001-419 implemented a phased-in approach to calculating the high cost support component of the State USF. According to the Commission Guidelines and Administrative Procedures approved by the Commission in Order No. 2001-996, the high cost support component was to be implemented in three phases:

(1) Initial Phase

The high cost support component is equal to the revenue reductions made by the Carriers of Last Resort ("COLRs") as a result of reduced tariffed rates approved by the Commission. The Initial Phase is limited to no more than one-third of the total fund approved by the Commission. The COLRs file cost study data to demonstrate that implicit support exists in the tariff rates proposed to be reduced. According to Footnote #2, p.5 of the Commission Guidelines and Administrative Procedures, "the High Cost Support shall be equal to the revenue reductions as the result of reduced tariffed rates approved by the Commission."

(2) Second Phase

The Second Phase is limited to no more than two thirds of the total state USF. The high cost support component for the COLR is based on reduced tariffed rates and updated cost data which demonstrates implicit support exists in the tariffed rates proposed to be reduced.

(3) Subsequent Phases

Any Subsequent Phase allows the COLR to transition to full high cost support funding. The high cost support component for the COLR is based on reduced tariffed rates and updated cost data which demonstrates implicit support exists in the tariffed rates proposed to be reduced.
(T. 356-57)

COLR high-cost disbursements have been calculated and distributed in this manner since the State USF was implemented in 2001. (T. 355) COLR disbursements are not based on the price of a bundled service. (T.363) Indeed, the total amount of State USF high cost disbursement

per COLR remains essentially static; while several COLRs have requested additional funding beyond the Initial Phase, most COLRs have not, and no requests for additional State USF support have been made or approved since 2004. (See, generally Docket No. 1997-239-C) According to Commission Order No. 2004-452, the per-line support calculation is performed for “portability purposes.” (Order 2004-452 at p. 23) If this Commission had authorized two COLRs to provide service in the same service area, the State USF would be portable from one COLR to another in the event a customer changed service providers. Because there is no instance of two COLRs providing service in one service area, there has been no “porting” of State USF support. The amounts authorized by this Commission in prior Commission orders under Docket No. 1997-239-C to be distributed to each COLR are the amounts distributed by ORS. (T. 358; 363) The Commission further found that the State USF should remain “static” so that the support that keeps basic local exchange service affordable does not disappear. (See Order No. 2004-452 at p. 24) Furthermore, the Commission determined in Order 2001-996 that: "until such time as the Commission conducts hearings to establish appropriate maximum rates, the maximum rates for determining Universal Service support shall be deemed to be the COLR's tariffed rate for residential and single-line business services." (Order 2001-996 Exhibit A at p. 9)

Even as the General Assembly enacted legislation to create the State USF, telecommunications carriers began to package and market multiple services to consumers and to offer those services at one price or individually pursuant to contracts. (S.C. Code Ann. § 58-9-280(I)). The analogy used by CenturyLink of the “value meal” to describe the concept of marketing multiple services for one price aptly describes the concept of bundled local service. Today, there are a myriad of bundle and contract offerings for consumers to choose from that include basic local telephone service. (See Hearing Exhibits 2, 8, and 9)

2005 S.C. Acts No. 5, effective July 1, 2004, commonly referred to as the “bundle” statute, deregulated both “bundled offerings” and “contract offerings” as defined by S.C. Code Ann. 58-9-285 (A)(1) and (2) (Supp. 2008). A bundled offering is an offering of two or more products or services at a single price which is advertised and sold at rates, terms or conditions that are different than if the services are purchased separately from tariffed offerings. Each regulated product or service in the bundle is available on a stand-alone basis under a tariff on file with the Commission. A contract offering is a contractual agreement where any tariffed product is offered at rates, terms, or conditions that differ from those set forth in the tariffs filed with the Commission.

Fast forwarding to 2009, the *Customer Choice and Technology Investment Act of 2009* (2009 S.C. Acts No. 7), allows COLRs to elect further deregulation in exchange for a phase down of support from the State USF. As of the effective date of its election, the COLR no longer has carrier of last resort responsibilities meaning it no longer has to offer service upon request to a customer throughout its designated service area.

The legislation does provide that the electing carrier has to continue providing service to those residential customers who have a “stand-alone residential line” that was in service on the pre-election date. A “stand-alone basic residential line” is defined as a single-line basic residential service that is billed on an account that does not also contain another service, feature, or product that is sold by the local exchange carrier (“LEC”)¹ or an affiliate of the LEC and that is billed on a recurring basis. In order to continue receiving support for the remaining “stand-alone residential lines”, the LEC must petition the Commission for such support prior to the end of the two year phase down. The Commission must determine the amount of distributions or payments from the State USF the LEC is entitled to receive, based only on the LEC’s

¹ A local exchange carrier may be a competitive local exchange carrier or an incumbent local exchange carrier.

stand-alone basic residential lines that were in service on the preelection date and that remain in service as of the date of the LEC's petition. The Commission also must establish a process for annually reducing the amount of distributions or payments from the State USF based on the LEC's stand-alone basic residential lines that were in service on the preelection date and that remain in service as of the adjustment date.

The electing carrier is also entitled to withdraw from the State USF all amounts needed to fund any state Lifeline match that is necessary to ensure that persons enrolled in the Lifeline program receive the maximum federally funded Lifeline credit amounts available, including without limitation, federal baseline credit amounts and federal supplemental credit amounts.

Notably, in this most recent legislation, the General Assembly did not prohibit the disbursement of State USF support where basic local service is provided as a part of a bundle or contract, although such a limitation could have been included:

For those LECs that have not elected to operate under this section, nothing contained in this section or any subsection shall affect the current administration of the state USF nor does any provision thereof constitute a determination or suggestion that only stand-alone basic residential lines should be entitled to support from the state USF. (2009 S.C. Acts No. 7 amending Section 58-9-576 to include (C) (11))

II. Statement of Facts

On July 6, 2009, a status conference was held at the offices of the Commission to discuss the establishment of a new docket to consider the issue of whether basic local service provided as part of a bundle or contract offering should receive State USF support. The status conference was held in response to a letter submitted by the South Carolina Telephone Coalition ("SCTC"), ORS and the South Carolina Cable Television Association ("SCCTA") to the Commission on May 28, 2009, requesting that the Commission proceed with an examination of the bundle/contract issue.

SCCTA had previously raised this issue in Docket No. 1997-239-C in its Motion dated July 3, 2008.

On July 31, 2009, the Hearing Officer, the Honorable David Butler, Esquire, issued a directive establishing this docket, identified representatives present at the status conference as parties to the new docket, required notice of the new proceeding to be posted in Docket No. 1997-239-C, required published notice so that any interested person or entity may participate, and required parties to the proceeding to submit position statements. On August 7, 2009, the Commission issued a Notice of Filing and Hearing scheduling a hearing for November 20, 2009 at 10:30 a.m. in the Commission's Hearing room at 101 Executive Center Drive, Saluda Building, Columbia, South Carolina. The Commission also issued deadlines for the prefiling of testimony in this matter on August 7, 2009. The Commission Docket Staff provided proofs of publication in newspapers of general circulation of the Notice of Filing and Hearing on August 18, 2009, on August 31, 2009 and September 1, 2009.

ORS, SCTC, United Telephone Company of the Carolinas d/b/a Embarq now known as CenturyLink, and Windstream South Carolina LLC submitted position statements in favor of continued State USF support where local service is provided as part of a bundle or contract offering. BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina² and Verizon South Incorporated indicated that they maintained a neutral position on the issue. SCCTA, CompSouth, tw telecom of South Carolina llc, NuVox Communications, Inc., and Sprint Communications Company, L.P. filed position statements indicating opposition to any funding from the State USF where basic local service is provided as a part of a bundle or contract offering.

² AT&T elected under 2009 S.C. Acts No. 7 to no longer participate in the State USF, and effective October 1, 2009, AT&T is no longer a COLR.

SCCTA, CompSouth, tw telecom of South Carolina llc, and NuVox Communications, Inc., filed a Motion to Compel on September 16, 2009. In its Motion, the CLECs sought the production of any and all documents submitted by the COLRs to ORS in regards to distributions from the State USF. On October 7, 2009, the Hearing Officer granted the Motion to Compel with conditions. The ORS and SCTC sought Commission review of the Hearing Officer's decision because the information sought was subject to a prior Commission order holding that the information should not be released except in aggregate form and because the information was not relevant to the issue pending before the Commission in this docket. On October 28, 2009, the Commission affirmed in part and denied in part the Hearing Officer's decision in light of information presented after the Hearing Officer's ruling. The Commission required ORS to produce data contained on Lines 1 and 2 of the South Carolina Annual Universal Service Fund ILEC Data Reports for each COLR from years 2005 to present. Lines 1 and 2 contain the number of residential and single-line business USF access lines served by the COLR in its designated service area. The Commission denied production of the entire report as the other information sought was outside the scope of the issue pending in this docket.

The Hearing Officer granted the CLECs Motion for Extension of the prefiled testimony deadlines, and the Commission granted Motions for Pro Hac Vice for Bruce Hurlbut, Esquire, Thomas J. Navin, Esquire, and Susan S. Masterton, Esquire.

The Commission hearing on the merits of this case was held in the Commission hearing room on November 20, 2009 at 10:30 a.m. before Vice Chairman, John E. Howard and Commissioners David A. Wright, G. O' Neal Hamilton, Swain E. Whitfield, and Randy Mitchell. Vice Chairman Howard presided with the Honorable David Butler, Esquire acting as advisor to the Commission.

At the hearing, testimony was heard from CenturyLink witness Ms. Ann C. Prockish, Senior Manager-Regulatory Operation. CenturyLink was represented by Mr. Scott Elliott, Esquire and Ms. Susan S. Masterton, Esquire. Windstream presented Mr. William F. Kreutz, Director Regulatory Strategy, and was represented by Mr. Burnet R. Maybank III, Esquire³ and Mr. Bruce Hurlbut, Esquire. Mr. M. John Bowen, Esquire, Ms. Margaret M. Fox, Esquire and Mr. Thomas J. Navin, Esquire represented SCTC. SCTC's witnesses were Mr. Glenn Brown, President of McLean & Brown, and Mr. Keith Oliver, Senior V.P. President of Corporate Operations for Home Telephone Company. Mr. Frank R. Ellerbe III, Esquire and Mr. John J. Pringle Jr., Esquire appeared on behalf of the SCCTA, CompSouth, and tw telecom of South Carolina llc ("tw telecom"). Mr. Pringle also appeared on behalf of Sprint Communications Company, L.P., Sprint Nextel Corporation, and NuVox Communications, Inc. ("NuVox"). Mr. Joseph Gillan, Economist, testified on behalf of SCCTA, CompSouth, tw telecom, and NuVox. Nanette S. Edwards, Esquire and Courtney Edwards, Esquire appeared as counsel for the ORS. ORS's witness Ms. Dawn Hipp, Director of Telecommunications, Transportation, Water and Wastewater, testified. Mr. Patrick W. Turner, Esquire appeared on behalf of BellSouth Telecommunications, Inc., d/b/a AT&T South Carolina ("AT&T") and Mr. Steven W. Hamm, Esquire appeared on behalf of Verizon Communications, Incorporated and Verizon South, Incorporated (collectively "Verizon"). Neither AT&T nor Verizon presented any witnesses at hearing. The Commission heard testimony from the parties in the following order: Ms. Prockish, Mr. Kreutz, Mr. Brown, Mr. Gillan, Mr. Oliver, and Ms. Hipp.

III. Argument

SCCTA, CompSouth, tw telecom, NuVox, and Sprint Communications Company L.P. (hereinafter referred to as the competitive local exchange carriers "CLECs"), advance the

³ Mr. Maybank was granted permission to be excused from the hearing.

position that Carriers of Last Resort (“COLRs”)⁴ who are recipients of the State USF should not receive such funding where local service is provided as part of a bundle or contract offering because the Commission cannot impose any requirements related to the rates of such offering. It is important to understand that incumbent local exchange carriers are COLRs and are thus obligated to provide basic local exchange telephone service, upon reasonable request, to *all residential and single-line business customers* within a defined service area. (S. C. Code Ann. § 58-9-10 (Supp. 2008) Emphasis added). The CLECs compete with the COLRs in some areas of the state but not in all areas of the state. (T. 24; 169) The CLECs currently are not recipients of the State USF but they are also not obligated to provide basic local service to *all* residential and single-line business customers within a defined service area unless the CLEC is designated as an Eligible Telecommunications Carrier (“ETC”) which entitles the ETC to participate in the Federal Universal Service Fund (“Federal USF”). No CLEC has requested COLR status, and none of the CLECs in this proceeding are ETCs. CLECs have the freedom to target their services to specific market niches such as business customers or even a subset of business customers with certain characteristics. (T. 24-26) But, all providers of telecommunications services contribute to the State USF including wireless companies that have sought and received ETC status. (Order 2001-996 Exhibit A at p. 3-4; Order No. 2001-419 at p. 37) The CLECs who are competitors of the COLRs filed testimony in opposition to continued State USF support for basic bundled local service.

The argument that basic local telephone service on a stand-alone basis promotes the goals of universal service but basic local service that is provided in conjunction with other features or services such as call waiting does not promote universal service, fails for the following reasons:

⁴ CenturyLink, Windstream, Verizon South Incorporated, and members of the South Carolina Telephone Coalition (“SCTC”) are COLRs and are parties in this docket.

(1) the State USF would be inconsistent with federal policies; (2) the State would lose federal matching Lifeline dollars; and (3) the COLR either (i) could choose not to offer bundled or contract offerings in order to remain eligible for State USF support or (ii) could elect complete deregulation under the *Customer Choice and Technology Investment Act of 2009* thereby leaving the state with no COLRs.

A. State USF High Cost and Lifeline/Link-Up Match

The CLECs offer several arguments against allowing State USF support for bundled basic local telephone service.

The argument most vigorously asserted by the CLECs against continued support is based on the premise that the COLRs are receiving State USF support for deregulated offerings sold at market rates. Because bundles and contract offerings are price deregulated, the CLECs contend that the COLRs should not receive support and to allow any State USF support would in effect result in subsidization of deregulated services. (T. 221 lines 11-14; 242) Additionally, the CLECs contend that because there is no maximum price that may be set for a bundle or a contract, any support provided is contrary to Section 58-9-280 (E) and Commission orders implementing this statute. (T. 222-223; 238-240)

Testimony provided by Ms. Prockish, Mr. Kreutz, Mr. Oliver and Ms. Hipp highlight that the current disbursement of State USF support is based on revenue neutral tariff reductions due to the Commission adoption of a phased in approach to implementing the State USF. (T. 28; 49; 110; 164-165; 301-302; 357-358) The Commission established that the maximum rates for determining State USF support shall be deemed to be the COLR's tariffed rate for residential and single-line business services. (Order No. 2001-996 at p.9; see also, T. 39) Thus, disbursements are not made based on the market price of the bundle but instead replace lost revenue due to the

removal of implicit subsidies contained in tariffed offerings, primarily reductions in intrastate switched access charges. (T. 357) Section 58-9-280(E)(4) provides that the size of the State USF shall be the sum of the difference between the COLR's costs of providing basic local exchange service and the maximum amount it may charge for the services. As referenced earlier, the Commission established the overall size of the State USF, but chose to implement the fund in phases. The S.C. Supreme Court upheld the Commission's decision to implement the State USF in phases. In Office of Regulatory Staff v. South Carolina Public Service Commission, et al, 374 S.C. 46, 59 647 S.E. 2d 223, 230 (2007), the Supreme Court affirmed Commission Order Nos. 97-753, 98-322, and 2001-419 implementing the State USF and noted that control of the fund is accomplished through the use of a "phased-in approach."

Furthermore, any allegation that the COLRs use the State USF to subsidize unsupported services provided in a bundle was roundly disputed by Ms. Prockish, Mr. Kreutz, and Mr. Oliver. (T. 92-93; 147; 302) As testified by Ms. Hipp, the support disbursed is designated for the basic local telephone service that may or may not be marketed as a bundle. (T. 373)

Mr. Gillan argued that once the Commission lost rate setting jurisdiction over bundles that there are no regulatory safeguards because the Commission and ORS no longer review the COLRs earnings under alternative rate regulation. (T. 224) The Commission, however, does have authority over the State USF; and therefore, there are regulatory safeguards regarding the administration of the State USF.

Mr. Gillan next argued that continued support for bundled local services will cause an expansion of the State USF. (T.232) To the contrary, representatives for CenturyLink, Windstream, and SCTC testified that the number of eligible lines currently reported include residential and single-line business access lines that are used to provide basic local service and

are part of a bundle or contract offering. (T. 47; 64-65;119; 129-130; 300) The truth is that Mr. Gillan's clients are hopeful that if the Commission orders the exclusion of bundled lines this will dramatically reduce the current level of disbursements. (T. 119; 226 lines 3-7 and lines 20-22; 227; 302 lines 5-11) The rationale behind the CLEC's position is because companies market bundles and customers are more likely to purchase a bundled offering as opposed to buying services "a la carte" the State USF will decrease if basic local service provided as part of a bundled line is excluded. (T. 119; 184 lines 4-7 and footnote 4; 226) As Mr. Glenn Brown testified, very few customers subscribe to the minimal functionalities defined in S.C. Code Ann. §58-9-10(9). (T. 184)

Mr. Gillan's assertions are not based on fact but are based on an overall disapproval of the fundamental structure of the State USF. Again, as stated earlier, the amounts disbursed to COLRs are based on revenue reductions made to tariffed offerings pursuant to Commission orders.⁵ (T. 357). It was argued that the Commission could adjust the amount disbursed by using the COLR line counts included on the *South Carolina Annual Universal Service Fund ILEC Data Report* so that bundled local lines are excluded. (T. 381) ORS's position is that it would require a significant change to the current structure of the State USF to accomplish that carve out. (T. 381; 384-385) In summary, the CLECs, in order to reach their goal of reducing the State USF, are seeking a fundamental change to the operation of the State USF.

Indeed, it is this disapproval of the very structure of the State USF that is the heart of the dispute. This disapproval is clear when Mr. Gillan argues that the State USF is a "revenue-in-perpetuity fund" or "best-of-all-worlds fund." (T. 238) Mr. Gillan rails against the current structure of the State USF, a structure that has been upheld by the S.C. Supreme Court. (Office

⁵ The 2005 Legislative Audit Council ("LAC") report acknowledged that the State USF is a revenue replacement fund and is not based on per line support. See LAC Review of the SC USF Dated February 2005 at page 18.

of Regulatory Staff v. South Carolina Public Service Commission, et al, 374 S.C. 46, 647 S.E. 2d 223 (2007). Mr. Gillan has previously testified before the Commission in Docket No. 1997-239-C against the implementation of the State USF (T. 266-268; 302-303)

Support should continue because whether the customer chooses to buy stand-alone basic local service or basic local service bundled with features and other services should be the customer's choice. The COLR has the mandated responsibility to provide that basic local service, and restricting support because the customer chose local service bundled with other features should not result in a denial of support. The cost to maintain the facilities necessary to provide basic local exchange service remains even if the customer moves to another provider. (T. 289 lines 19-23; 290).

Mr. Gillan also indicated that he opposed Lifeline support where local service is bundled with other services. Mr. Gillan cited to a statement attributed to Verizon in a Florida Public Service Commission proceeding:

Mandating Lifeline discounts for bundles would not increase subscribership because its principal effects would be to encourage Lifeline customers who already have basic service to upgrade to nonbasic Service packages... (T. 243)

Mr. Gillan goes on to state that allowing State USF support for bundles does not further the goals of universal service. (T.244) He recommends that the State USF should be limited to stand-alone basic local service offered at regulated rates. (T. 227) Denying Lifeline and Link-Up benefits to those customers who are already suffering economic hardships on the basis that the customer chose a bundle is not in the public interest. Furthermore, our statutory definition of a bundle as set forth in Section 58-9-285 would not allow a residential customer to utilize the most common features associated with basic local phone service such as call waiting if it is marketed at one price. Mr. Gillan argued that allowing such support will not increase subscribership; but

certainly, if adopted, the restrictions Mr. Gillan suggests may decrease the take rate of Lifeline/Link-Up. And, if the State USF match is withdrawn, then the State loses the additional \$1.75⁶ provided by the Federal USF, resulting in less financial support to the segment of our population that needs the most assistance and results in fewer federal dollars coming to South Carolina. (47 C.F.R. §54.403 (a)(3) (2008)). When a COLR makes the election under 2009 S.C. Acts No. 7, the legislature ensured that the Lifeline/Link-Up match provided by the State USF remained intact. (2009 S.C. Acts No. 7 amending Section 58-9-576 to include (C) (9)(d)) Therefore, Lifeline and Link-up assistance for qualifying low income customers is preserved even if the company is no longer a COLR.

To adopt the position that basic local service provided as part of a bundle is no longer supported by the State USF would result in the State USF being inconsistent with current federal policies. The FCC does not regulate the rates of those ETCs who receive high cost funding just as this Commission does not regulate the pricing of bundles. The FCC openly discussed in its order that one facility may be used to provide local telephone service as well as advanced services that are not directly supported by the federal high cost fund:

Accordingly, we continue to support the Commission's prior conclusion that "our universal service policies should not inadvertently create barriers to the provision or access to advanced services, and. . . that our current universal service system does not create such barriers." Thus, even though advanced services are not directly supported by federal universal service, "[Commission] policies do not impede the deployment of modern plant capable of providing access to advanced services." We recognize that the network is an integrated facility that may be used to provide both supported and non-supported services. We believe that the [sic] our policy of not impeding the deployment of plant capable of providing access to advanced or high-speed services is fully consistent with the Congressional

⁶ The State USF provides a match of \$3.50 in order to obtain the maximum available federal funding for the Lifeline program. See 2001-419, page 3, para. 11. Lifeline and Link-Up provide a discount to qualifying low-income customers so that they may purchase basic local telephone service.

goal of ensuring access to advanced telecommunications and information services throughout the nation.⁷

The FCC does not deny or reduce the amount disbursed for federal high cost funding where basic local service is bundled with other services. (T. 29; 35-36; 112; 124; 184) Indeed, the FCC indicated that it would not carve out high cost support where multiple services are provided on the same facility because the FCC did not want to discourage or create a hurdle to the deployment of advanced services. (T. 185-186; 362) If the customer chooses a bundle consisting of basic local exchange telephone service and high speed internet then State USF support would, if the CLEC's position is adopted by this Commission, be denied. Mr. Kreutz testified that removing support for basic local exchange service where the line is bundled with broadband would slow the provision of advanced services in rural areas. (T. 110; 114; 143; 149). Thus, to remain consistent with federal policies the State USF needs to continue to support residential and single-line business services which are provided over the loops supported by Federal USF.

Similarly, the FCC does not limit or exclude Federal USF disbursements for Lifeline/Link-up where the residential customer has bundled local service. Nor should this Commission deny State USF Lifeline/Link-Up matching support where a residential customer receives bundled local service. To adopt such a decision would mean less Federal Lifeline support for South Carolinians. Again, if the State USF is to be consistent with applicable federal policies as required by Section 58-9-280(E), then bundled local service should not be excluded from State USF support.

⁷ *In the Matter of Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, CC Docket No. 96-45 at ¶ 13 (rel. July 14, 2003).

Finally, the FCC is considering a complete restructure of the Federal USF program to include broadband support.⁸ The FCC recently sought comment on how to reform the Federal USF to directly support the deployment of advanced services:

In the past, the Commission and the Federal-State Joint Board on Universal Service have sought comment on various ideas to reform the high-cost mechanism in a manner that would advance broadband deployment. One potential option would be to supplement the existing high-cost programs with one or more additional programs that would target funding for broadband deployment in unserved areas. Another option would be to gradually reduce funding under the existing high-cost programs over a period of years and to transition that funding into a redesigned mechanism that explicitly funds broadband.⁹

If the FCC restructures the Federal USF then at that time the Commission may need to revisit the State USF to determine what, if any, changes must be made to be consistent with federal policies. It would be counter-productive for the Commission to *now* prohibit State universal service support because a customer is receiving both internet and phone service on the same facility in a bundled offering when federal policies are evolving in a manner that may offer direct support for broadband deployment.

Adopting the CLECs position means that the State USF would not be consistent with federal policies; that the State would lose federal matching Lifeline dollars; and may result in either the COLRs no longer offering bundled or contract offerings or more COLRs may choose to shed their COLR status pursuant to 2009 S.C. Acts No. 7. Neither situation benefits customers. It is also possible that a COLR may choose to offer bundled local service but at a higher price in rural areas because of the removal of State USF support. (T. 110)

⁸ *Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, GN 09-47, 09-51, 09-137, NBP Public Notice #19, DA 09-2419 (rel. Nov. 13, 2009) (Public Notice).

⁹ *Id.* at 2.

Importantly, no carrier has stepped in to take over AT&T's service area as a COLR. (T. 93) One might conclude that the monetary benefits provided by the State USF do not outweigh the monetary requirements placed on COLRs. The COLRs are obligated to provide basic local service anywhere within their designated service areas regardless of cost. (T. 54-55;76) In fact, CenturyLink's witness Ms. Prockish testified that without State USF support, CenturyLink would consider filing for election under 2009 S.C. Acts No. 7. (T. 93) If all COLRs were encouraged to make the same election because of the removal of State USF support for bundled local service, there will be no carriers of last resort. Without any carriers of last resort, the Commission and ORS have no ability to ensure that affordable basic local exchange telephone service is actually available. As set forth in Section 58-9-280(E), the purpose of the State USF is to ensure universally available basic local exchange telephone service at affordable rates. It is unclear how this statutory mandate can be met without COLRs.

B. Statutory Provisions Regarding State USF Support For Bundled Local Service

Nowhere in Title 58 or in the *Customer Choice and Technology Investment Act of 2009* (2009 S.C. Acts No. 7) is there a prohibition against the support of basic local exchange telephone service that is provided as part of a bundle or contract. The legislature could have inserted such an express exclusion in Section 58-9-285, which was enacted several years after Section 58-9-280, or in 2009 S.C. Acts No. 7. There is a basic presumption the General Assembly has knowledge of previous legislation when later statutes are passed on a related subject. (Bell v. South Carolina State Highway Dept., 204 S.C. 462, 30 S.E.2d 65 (1944) and Arnold v. Association of Citadel Men, 337 S.C. 265, 523 S.E.2d 757 (1999))

Furthermore, Section 58-9-280 (I) as first enacted pursuant to 1996 S.C. Acts No. 354 provides as follows:

The incumbent LEC's subject to this section shall be authorized to meet the offerings of any local exchange carrier serving the same area by packaging services together, using volume discounts and term discounts, and by offering individual contracts for services, except as restricted by federal law. Individual contracts for services or contracts with other providers of telecommunications services shall not be filed with the commission, except as required by federal law, provided that telecommunications carriers shall provide access to such contracts to the commission as required.

In response to Commissioner Whitfield's question regarding this statute, Ms. Prockish responded that she considers "packaged services" and "bundled services" to be the same. (T. 94-95) Hence, the argument that State USF support can no longer be provided if local service is part of a bundle due to the enactment of the "bundle" statute is undermined by the fact that in 1996 COLRs were permitted to offer "packaged" services and to enter into individual contracts for services and those contracts were not filed with the Commission.

This case has centered on the "bundle" statute. Subsection (C) of Section 58-9-285 clarifies that contributions to the State USF are required, and the Commission's jurisdiction over distributions is left intact. Certainly, the legislature considered the impact of bundled services on the State USF because there is an express provision requiring contributions.

A qualifying LEC or qualifying IXC providing bundled offerings or contract offerings is obligated to provide contributions to the Universal Service Fund (USF), and the commission shall ensure that contributions to the state USF, pursuant to Section 58-9-280(E), are maintained at appropriate levels. Nothing in this section affects the commission's jurisdiction over distributions from the USF pursuant to Section 58-9-280(E). (Emphasis added).

Additionally, the Commission's authority to decide how to handle distributions where a bundle includes basic local telephone service remains intact.

The retention of Commission authority to decide whether distributions should include support for bundled basic local telephone service was reinforced in 2009 S.C. Acts No. 7 when

the legislature clarified that the passage of Act 7 does not alter the administration of the State USF and Act 7 does not limit State USF support to stand-alone basic residential lines.

In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992) The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964) When reviewing Sections 58-9-10, 58-9-280, and 58-9-285 in conjunction with 2009 S.C. Acts No. 7, the reasonable conclusion is that basic local exchange telephone service provided as part of a bundle or contract is not prohibited by current law but that this decision has been left to the Commission to review and decide.

IV. Conclusion

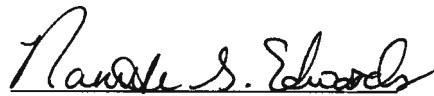
Excluding State USF support where basic local telephone service is provided as a part of a bundle or contract would create inconsistencies between the State USF and current federal policies, and the State would lose federal matching Lifeline dollars. Ultimately, the COLR (i) may choose not to offer bundled or contract offerings or (ii) may elect complete deregulation under the *Customer Choice and Technology Investment Act of 2009*. If all COLRs make this election and no new carrier files for COLR status, then there is the question of how to meet the statutory mandate of ensuring universally available basic local exchange telephone service at affordable rates. It is also possible that the COLR may increase prices for bundled local services in rural areas if State USF support is withdrawn. For all of the above reasons, ORS recommends that the Commission allow State USF support for basic local exchange telephone service

regardless of whether it is provided on a stand-alone basis or as part of a bundle or contract offering.

ORS respectfully submits that there is no statutory or regulatory prohibition against the continued provision of State USF support for basic local telephone service provided as part of a bundle or contract, and the consumer should be afforded the opportunity to choose from a variety of products and services without losing the benefits of the State USF.

Dated this 17th day of February, 2010.

Respectfully submitted,

A handwritten signature in cursive script, reading "Nanette S. Edwards".

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